

REMARKS

Claims 1-45 are pending in this application. The Examiner has required a restriction of the pending claims to one of the following claim groups:

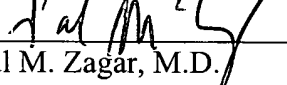
- Group I: Claims 1-4, 10-11 and 16-17 directed to a vaccine comprising an immunogenic EBNA-1 polypeptide and an adjuvant, and a method of use of the vaccine;
- Group II: Claims 5-9, 12-15 and 18-19, directed to an expression vector for expression in humans comprising a sequence encoding an immunogenic EBNA-1 polypeptide and a method of immunizing using the expression vector;
- Group III: Claims 20-26, directed to a pharmaceutical composition comprising an EBNA-1 charged dendritic cell;
- Group IV: Claims 27, 31-32 and 34 directed to a method for protecting a subject from infection by EBV comprising administering an EBNA-1 charged dendritic cell;
- Group V: Claims 28-30 and 33 directed to a method for protecting a subject from EBV-associated malignancies comprising administering an EBNA-1 charged dendritic cell;
- Group VI: Claims 35 and 37-39 directed to a method for making an EBV-protective human dendritic cell comprising contacting the cell with EBNA-1 *ex vivo*;
- Group VII: Claim 36, directed to a method for making an EBV-protective human dendritic cell comprising contacting the cell with EBNA-1 *in vivo*; and
- Group VIII: Claims 40-45, directed to a method for making an EBV-protective human dendritic cell comprising contacting the cell with a vector for expression of EBNA-1 in humans.

In order to be fully responsive to the Requirement for Restriction, Applicants hereby provisionally elect, with traverse, to prosecute the claims of Group VI (*i.e.*, claims 35 and 37-39) directed to methods for making an EBV-protective human dendritic cell comprising contacting the cell with EBNA-1 *ex vivo*. However, Applicants respectfully traverse the Requirement for Restriction and reserve the right to petition therefrom under 37 C.F.R. 1.144. In particular, and contrary to what is indicated in the Official Action, the claims of Group VIII (*i.e.*, claims 40-45) can be examined with claims 35 and 37-39 without any undue burden on the Examiner or the Patent and Trademark Office.

Under Patent Office examining procedures, "if the search and examination of an entire application can be made without serious burden, the Examiner *must* examine it on the merits, even though it includes claims directed to distinct or individual inventions." See, M.P.E.P. 803 (emphasis added). The claims of Groups VI and VIII do not define methods or compositions which are sufficiently distinct to warrant separate examination and searches. The claims of Groups VI and VIII both require a dendritic cell. Moreover, the claims of Groups VI and VIII both relate to methods for making an EBV-protective dendritic cell, thus search and examination of these claims would not impose a serious burden on the Examiner. For these reasons, Applicants respectfully request that the Examiner modify the Requirement for Restriction and examine the claims of Groups VI and VIII in this application.

Dated: April 12, 2004

Respectfully submitted,

By 
Paul M. Zagar, M.D.
Registration No.: 52,392
DARBY & DARBY P.C.
P.O. Box 5257
New York, New York 10150-5257
(212) 527-7700
(212) 753-6237 (Fax)
Attorneys/Agents For Applicant